

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KAREN S. SIMMONS, LAWRENCE L.  
SIMMONS, KAREN S. SIMMONS as next  
friend of A.A.S., a minor, and LAWRENCE  
L. SIMMONS, as next friend of A.A.S., a  
minor,

Case No. 1:10-cv-51

Plaintiffs,

Hon. Robert J. Jonker

v.

BOYS AND GIRLS CLUB OF  
GREATER KALAMAZOO,

Defendants.

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**ORDER APPROVING REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 29) and Petitioner's objection to it (docket # 34). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Report and Recommendation recommends dismissing Plaintiffs' claims without prejudice for lack of prosecution based on Plaintiffs' attempt to proceed on behalf of their child without an attorney. It further recommends denying Plaintiffs' motion for an evidentiary hearing to appoint a guardian ad litem. Plaintiffs raise a number of objections to the Report and Recommendation, but none of the objections undermine the conclusion of the Magistrate Judge. After a de novo review of the record, the Court orders that the case be dismissed without prejudice and that Plaintiffs' motion for an evidentiary hearing be denied.

Plaintiffs brought this action under 42 U.S.C. § 1983 as individuals and as next friends of their minor child, A.A.S., claiming that defendant violated their civil rights. Plaintiffs filed the action pro se. Although Plaintiffs are properly acting as the next friends of their child, *see* FED. R. CIV. P. 17(c), they cannot, as non-attorneys, represent the interests of another person, even their own child, in litigation. *See Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002) (“[P]arents cannot appear pro se on behalf of their minor children because a minor’s personal cause of action is her own and does not belong to her parent or representative. As a result, [plaintiffs] could not appear pro se in the claims brought on behalf of the [their] son . . .”). On March 19, 2010, the Magistrate Judge ordered Plaintiffs to show cause (docket no. 13) why the case should not be dismissed for lack of prosecution on the ground that Plaintiffs cannot appear pro se on behalf of their minor child. *See id.*; *see also Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2nd Cir. 1990). Plaintiffs response to the show-cause order demonstrates that they do not understand the problem:

They believe that the issue is with their acting on behalf of the child as next friend, rather than with their pro-se legal representation of the child. This misunderstanding is further shown by their motion for an evidentiary hearing to appoint a legal guardian ad litem for the child, which is unnecessary given that they are properly acting as the child's next friends. Their objection to the Report and Recommendation demonstrates precisely this same misunderstanding. The Magistrate Judge has given Plaintiffs ample opportunity to remedy their defect by securing an attorney to represent the minor child, which Plaintiffs have not done. The Magistrate Judge properly concluded that this case should be dismissed without prejudice for failure to prosecute.

**ACCORDINGLY, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge, filed June 6, 2010, is approved and adopted as the opinion of this Court.

**IT IS FURTHER ORDERED** that Plaintiffs' claims are dismissed without prejudice and their motion for an evidentiary hearing (docket # 20) is **DENIED**.

Dated: August 24, 2010

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE